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SUBJECT: ISTANBUL WRITERS SPEAK OUT ON FREEDOM OF
EXPRESSION AND PROBLEMATIC PENAL CODE

REF: A. ANKARA 5233

[B](#). ISTANBUL 1780
[C](#). 04 ANKARA 6116

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[1](#). (SBU) Summary: A "Gathering for Freedom of Expression" November 19-22 in Istanbul brought local writers, authors and activists together to evaluate the state of free speech in Turkey. Though Noam Chomsky's counter-intuitive (and perhaps garbled) statement that Europe has much to learn from Turkey about the topic monopolized press attention, more meaningful was participants' conclusion that the 2004 Turkish Penal Code was a step backward for freedom of expression in Turkey. Attendees agreed that self-censorship still exists in Turkey, and has in fact intensified as a result of the continuing prosecution of publishers and authors. End summary.

[2](#). (U) Istanbul's Initiative for Freedom of Expression and local branches of Amnesty International, International PEN and Turkey's Human Rights Association, among others, organized a "Gathering for Freedom of Expression" in Istanbul November 19-22. Six Istanbul municipalities were listed as "supporters," and offered community centers and municipal theaters for activities throughout the event. Among those addressing the gathering were Orhan Pamuk and Noam Chomsky (the latter via a video greeting).

[3](#). (U) In his address, Pamuk repeated the phrase that resulted in criminal charges against him -- that one million Armenians and 30,000 Kurds had been killed in Turkey (ref A) -- emphasizing that for him, "these are scholarly issues...I am a novelist. I address human suffering and pain, and it is obvious, even in Turkey, that there was an immense hidden pain which we now have to face." Garnering the most press coverage was Chomsky's surprising statement that Europe had much to learn from Turkey in the area of freedom of expression. Though papers did not reflect this, he (with typical opacity) seemed to be referring to the vigor with which free speech activists in Turkey are moving to defend their rights.

Some Relaxation in the Mood...

[4](#). (U) Writers and publishers evaluated the state of free speech in Turkey in a November 22 panel discussion featuring publisher Ragıp Zarakolu and others who have faced charges for their work. In the session, Reporters without Border representative Erol Onderoglu expressed optimism about what he called an increased awareness in Turkey about freedom of expression issues, and society's acceptance of the legitimate role the media plays in the public realm. Onderoglu pointed out that cases brought against writers have not always resulted in convictions; he noted a case in Batman where a judge cited ECHR precedents in siding with a journalist and telling the members of Parliament who brought the suit that they must be prepared to "tolerate" criticism.

...But Still Many Risks

[5](#). (U) Despite some advances, however, Onderoglu said the government has not fully accepted the media's public service role, and "never misses a chance to file a case." The plaintiff with the highest number of cases against journalists was the Joint Chiefs of Staff, he claimed, with 18 in 2005. Beyond court cases, said Onderoglu, 22 attacks were committed against journalists in 2004, in the first nine months of 2005 alone the number had reached 32. (Note: He neither defined "attack" nor mentioned specific instances. End note.)

[6](#). (U) Onderoglu discussed the "sensitive" issues that cause the most problems for journalists, putting Armenian issues near the top of the list. In addition to the more well-known Article 301 of the Penal Code, which covers insults against the State and Turkishness (ref B), he said Article 305 also restricts the Armenian debate with its

stipulation that "citizens who receive financial benefit from a foreigner or a foreign institution directly or indirectly with the purpose of taking an action against fundamental national benefits...including independence and national security" can be sentenced to ten years.

17. (U) Onderoglu also criticized Article 216 of the penal code as it impacts the headscarf debate, saying it has created confusion in the judiciary. Article 216 states that a person who incites hatred toward others based on class, race, religion in a way that might endanger public order can be sentenced to up to three years in prison. Without referring to specific cases, Onderoglu claimed some in the judiciary equate wearing a head scarf with inciting hatred. He closed by touching on local minority language broadcasting, lamenting the slow pace in enacting reforms that would allow such broadcasting in Kurdish. Ten applications are pending, with no implementation since the legislation had passed.

To What Are We Harmonizing?

18. (U) Panelist Metin Celal, chair of Turkey's Publishers' Association, told the gathering that Turkey had taken a step back in freedom of speech with the new Penal Code, particularly Article 301. Celal focused on challenges facing publishers, mentioning a recent case against Aram Publishing House, publisher of a book by US author John Tirman, which includes information about human rights violation in southeast Turkey during the 1990's, and which allegedly "insults the memory of Ataturk" in another chapter. Aram's owner faces up to six and a half years in prison if convicted. Celal, like Onderoglu, touched on Article 216 regarding incitement, citing the case of academics and former members of the GOT's Human Rights Consultation Board being prosecuted under this article for a report they published on minorities last year (ref C). Lawyer and author Fethiye Cetin (among whose clients is Hrant Dink) agreed the 2004 penal code had been a step back, arguing that it protects the State rather than citizens. Many of the articles view citizens' actions through a security lens, she said, resulting in the judiciary's de facto consideration of military and security policies in their decision-making.

Self-censorship Remains

19. (U) Nadire Mater, author and advisor to Bianet, a network for monitoring and reporting on freedom of expression issues in Turkey, argued that self-censorship is still common among journalists here, especially as regards issues related to the military. She highlighted the recent news that descendants of Armenians who had died in 1915-16 had recently won a USD 17 million settlement from French insurance company Axa. Axa has a partnership in Turkey, Axa Oyak -- the Turkish Armed Forces Pension fund. This could be an important story, she said: Does Axa Oyak have some connection to or role in solving "the Armenian problem"? Zaman and Hurriyet did tackle the topic briefly, she said, but many decided not to cover it, considering it too sensitive. Celal alluded to a similar point in his presentation, pointing out that with the precedents of fines and charges against publishers, many houses were becoming much more selective about the material they accepted.

Article 301: Ragip Zarakolu Update

10. (U) Publisher Ragip Zarakoglu currently has three cases open against him, and a group of conference participants attended hearings in two of the cases on November 21. The Article 301 charges against him stem from two books he published: Dora Sakayan's "Garabet Hacheryan's Izmir Journal: An Armenian Doctor's Experiences," and George Jerjian's "History Will Free Us All -- Turkish-Armenian Conciliation." In the hearing regarding the Jerjian book, material was sent to an expert committee that will determine if the book is insulting; in the Sakayan case, the prosecutor asked for six years imprisonment in his final statement, calling for conviction for both insulting the state and the armed forces. (Note: Conviction on one count of violating Article 301 carries a maximum penalty of three years. End note.) Hearings in the latter case will resume February 15.

12. (SBU) Comment: Orhan Pamuk's case may have monopolized Western media attention, but the Istanbul gathering illustrates how wide a net Turkish prosecutors have spread in applying Turkey's new penal code. This is an area where even Turkey's friend, EU Enlargement Commissioner Olli Rehn, has been using increasingly strong language, issuing what Turkish press called a "warning" about freedom of expression. The conference highlighted activists' determination to continue to shine the spotlight on and challenge freedom of speech restrictions. They also made one important point that we highlight regularly: while many cases may eventually be

dismissed, the very fact that they are brought brings about
an unhealthy degree of self-censorship. End comment.
JONES